



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,249	06/28/2002	Kenichi Tabata	50069-110	1960
20277 7590 07/15/2009 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				
EXAMINER				
REICHL, KARIN M				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
07/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/030,249

Applicant(s)

TABATA ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 28, 32, 33, 37-39, 41-45 and 48-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 28, 32, 33, 37-39, 41-45 and 48-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2004 and 26 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/07, 2/09, 3/09, 5/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's response is considered to be the claims, remarks, clean and marked up specifications and the annotated sheets of Figures 5-11-09. The replacement sheets filed 2-28-08 were not considered part of the response due to the request on page 1, second and third lines from the bottom. Applicant did not submit any replacement drawings with the 5-11-09 response.

2. The substitute specification filed 5-11-09 has been entered. However note the discussion *infra*.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

4. The annotated drawings only were received on 5-11-09. See the discussion in paragraph 1 *supra*. Therefore see the following discussion. It is noted however that even if replacement Figures had been submitted 5-11-09 including the changes shown in the annotated drawings, that such still would not have overcome all the pending objections, e.g. a line from

each numeral to the structure it denotes should be set forth, e.g. no numerals separated by commas as seen in Figures 12 and 13 nor parentheses either as proposed.

5. The drawings are objected to because the Figures are still replete with informalities. *supra*. For example, a line from each numeral to the structure it denotes should be set forth, e.g. no numerals separated by commas as seen in Figures 12 and 13. In Figure 1, what is the structure at the end of the line from numeral 3? Also outlines of structure underlying other structure and lines from numerals denoting such structures should be dashed, e.g. the line from 101 in Figure 12 and 100 in Figure 18 should be dashed. Structure which is the same in various should be shown consistently, e.g. see the fixing/adhesive shown by asterisks between the baseline BL and the absorbent 3 in Figure 2A and then see Figure 2B which does not show such. The Figures should be consistent with the textual description, e.g. where is ZW in Figure 27 as described in paragraph 174? It should be noted that these examples are merely illustrative. The Figures should be carefully reviewed and revised, as necessary, to overcome all the informalities therein. Applicants are thanked in advance for their cooperation in placing the drawings in proper form. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

6. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112,

first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: paragraphs 2-4 as filed 5-11-09.

7. The disclosure is still objected to because of the following informalities: The description of 5-11-09 is still replete with informalities. For example: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01 (see and note the discussion *infra* in paragraphs 9-10 also). 2) The textual and pictorial description should be consistent throughout the application at the very least, e.g. see discussion in paragraphs 9-10 *infra*. The specification should be carefully reviewed and revised, as necessary, to overcome the informalities therein. Applicants are thanked in advance for their cooperation in placing the description in proper form.

Appropriate correction is required.

Claim Objections

8. Claims 26, 28, 32-33, 37-39, 41-45 and 48-61 are objected to because of the following informalities: the claims are replete with informalities. For example: In claim 26, on lines 3 and 5, before "opposite", each, --respective-- should be inserted. In claim 59, lines 3-4, before "opposite", each, --respective-- should be inserted. On line 14, after "flap", ",", should be --and-- . On line 20, "to encircle said wearer's legs" should be --adapted to encircle respective legs of the wearer-- . On line 21, before "front" and "back", --a-- should be inserted. In claim 60, lines 2 and 6-8 are redundant. With regard to claim 32, see the discussion of claims 26 and 59-61 which discussion also applies to similar language in this claim. Additionally, in claim 32, on line 19, "with" should be --in-- and on line 43, "while" should be --with-- and "is" should be deleted.

With respect to claim 50, see the discussion of claim 59 supra which discussion applies to similar language in this claim. With regard to claim 51, lines 2-3, “all”, each, should be --said--. With regard to claim 52, see the discussion of claim 32, line 43 supra which discussion also applies to similar language in this claim. Additionally, on line 12, “, correspondingly,” should be --at respective opposite side edges--. With respect to claim 53, see the discussion of claims 59 and 52 supra which discussion applies to similar language in this claim. With respect to claims 54-55, see the discussion of claims 59-61 supra which discussion applies to similar language in this claim. With respect to claims 56-58, see the discussion of claims 52 and 54-55 supra which discussion applies to similar language in this claim. It should be noted that these examples are illustrative of the informalities in claims 26, 28, 32-33, 37-39, 41-45 and 48-61. The claims should be carefully reviewed and revised, as necessary. Applicants are thanked in advance for their cooperation in placing the claims in proper form. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 26, 28, 32-33, 37-39, 41-45 and 48-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 26, it is unclear whether “the opposite side edges of the absorbent structure”, lines 3-4, and “the opposite lateral sides of the absorbent structure, lines 5-6, are one and the same. Also the description of the “free portion” as including a base portion which is attached to the side flap, i.e. not free, on lines 14-15 is inconsistent. Also, the description on lines 6-7, i.e. “provided separately from” is unclear, i.e. not attached to (Note however the

preceding sentence)? Non-monolithically formed therewith? Spaced therefrom? Also, and therefore, a clear positive antecedent basis for “each of said side flaps between the side edge of said absorbent structure and said base portion of said free portion”, last two lines, should be set forth. On line 15, the “longitudinal centerline” of what structure? The article? The cuff? Also is this centerline and that on lines 18-19 one and the same? The discussion of claim 26 also applies to similar language in claim 32. Additionally, with regard to claim 32, the description on lines 20-24 of the stretching members both as to number and location is unclear/inconsistent, i.e. how many members are there at a minimum? At least two members, i.e. one in the vicinity of the distal end and one in the vicinity of the proximal end? At least those two members in the vicinity of the distal end and at least two further members in the vicinity of the proximal end, i.e. at least a total of four members? Also a positive structural antecedent basis for “its opposite sides”, lines 42-43, should be set forth. With regard to claim 39, lines 14-16, see discussion supra of claim 26, lines 14-15 and 6-7, which discussion applies to similar language in this claim. In regard to claim 59, positive structural antecedent bases for “its wearers side”, “its back side”, and “the back side”, lines 7-8, and “the opposite sides of said disposable absorbent article”, line 19, should be set forth. Also, it is unclear whether the “opposite side edges of the absorbent structure” on line 3 and the “opposite lateral sides of the absorbent structure” on lines 4-5 are one and the same. Also, the description of the “free portion” as including a base portion which is attached to the side flap, i.e. not free, is inconsistent. This also applies to similar language in claim 60. In regard to claim 61, positive structural antecedent bases for “the longitudinal direction of ...article”, line 2, and “the longitudinal centerline-side...article”, lines 4-5, should be set forth. Also, the description of the stretching members as being in the absorbent

core of the absorbent structure is inconsistent with the description of the location thereof on lines 18-20 of claim 59, i.e. between the structure and the back sheet. With respect to claim 49, see the discussion of claim 59 which discussion also applies to similar language in this claim. Additionally, are the “opposite laterally extended portions”, line 6, and the side flaps of claim 26 one and the same? Furthermore, a positive structural antecedent basis for “said free portion of said standing cuff” (Note that more than one cuff and portion has been previously claimed) should be set forth. With respect to claim 50, lines 3 et seq, see discussion of claim 49 which discussion also applies here to similar language. With regard to claim 51, a positive structural antecedent basis for “the contraction percentage”, all, and “each...between said...folding portion”, lines 3-4, should be set forth. With respect to claim 52, lines 2-3 and 13, see discussion of claim 59 which discussion also applies here to similar language. With respect to claim 52, lines 6-9, see discussion of claim 49 which discussion also applies here to similar language. With respect to claim 53, see discussion of claims 59 and 52 which discussion also applies here to similar language. With regard to claim 54, a positive structural antecedent basis for “the narrow portions”, line 3, should be set forth. With respect to claim 55, see discussion of claim 61 which discussion also applies here to similar language. With respect to claims 56-58, see discussion of claims 52 and 54-55 which discussion also applies here to similar language.

10. Claims 26, 28, 32-33, 37-39, 41-45 and 48-61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 26 now claims each of the standing cuffs has a

free portion adapted to contact a wearer's leg, the free portion provided with stretching members for applying stretching force to the free portion so that the free portion extends in a direction toward the wearer's leg when the wearer wears the article, the free portion comprising a base portion attached to the side flap, a folding portion located at a longitudinal centerline-side with respect to the base portion, a standing portion located between the base portion and the folding portion, and a contacting portion folded back at the folding portion so as to extend laterally outward away from a longitudinal centerline and adapted to contact the wearer's leg, two or more stretching members arranged in the vicinity of a distal end of the contacting portion so as to be spaced from each other, at least one stretching member arranged in the vicinity of a proximal end of the base portion, and at least one said stretching member arranged in the vicinity of the folding portion. Applicant cites various portions of the originally filed specification and drawings. However, while, e.g., page 8, lines 13-25 and page 17, last paragraph, set forth a cuff comprising a base portion, a free portion and a base line therebetween and the free portion including a standing portion extending from the base line and a contacting portion and elastic members as set forth on pages 18-19, and in Figure 2 and the original claim 1, this is not what is claimed. Note with respect to claim 28, lines 3-4, page 8, line 16 of the original specification, i.e. "unfixed", and note that such attachment is not required by the claim to be direct. With respect to claim 32, see discussion of claim 26 supra which also applies to similar language in this claim. Additionally, see lines 49-51 of claim 32. Applicant did not provide the portion of the original specification relied upon for support. However, while page 25, lines 9-18 of such specification provide for the distal edge not be vertical at its front and rear ends while such edge is almost vertical at the central portion thereof, this is not what is claimed. Claim 39 now requires means for gathering

not be provided on said waist flap. Applicant relies upon page 13, lines 17-18 of the original specification. However, which such sets forth “means for gathering the article is not provided at the waist flap” (emphasis added), this is not what is claimed. With respect to claim 39, lines 14-27, see page 14 lines 5-17 of the original specification and the discussion of claim 26 supra with respect to the free portion and the base portion which discussion also applies here. With respect tot the last line of claim 42, Applicant cites original claim 22 and pages 13-14 as support. However, such does not set forth the cuff extends almost vertically as now claimed. Claim 43 now sets forth a distance between a proximal end of the free portion and a distal edge of the waist flap is from 1 mm to 40 mm. Applicant relies upon original claim 23 and page 3. While such provides that the back end edge of the sheet with regard to the back end of the waist flap has such distance, this is not what is claimed. With respect to claim 49, while page 7 of the original specification sets forth the standing cuff extends from the side edges of the pervious and impervious sheets or the free portion extends vertically from the pervious sheet, this is also not what is claimed. With regard to claim 50, see the discussion of claim 49 which discussion also applies here to similar language in this claim. With regard to claim 52, lines 10-15, see the discussion of claim 26 supra which discussion also applies here to similar language in this claim. Claim 59 requires, as best understood, see discussion supra, an absorbent structure between a liquid pervious sheet and a liquid impervious sheet and a back sheet backing the liquid impervious sheet and lifting stretching members being between the absorbent structure and the back sheet in combination with the other claimed features. Applicant cites particular portions of the original specification but they do not provide support for such new claim. Furthermore, while other portions of the original specification, e.g., Figures 12-17 and pages 32, last line- page

33, line 10, provide support for such lifting stretching members between the absorbent structure and the liquid impervious sheet, i.e. sheet 12, and laterally inboard of the base line of the standing cuff, this is not what is claimed. Furthermore, new claim 61 now claims the lifting stretch members additionally being in the absorbent core of the absorbent structure. Applicant again cites particular portions of the original specification, e.g. Figure 21 and pages 33-35. However, while such disclose stretching lifting members in the core, such does not provide support for the combination set forth in claim 61 which depends from claim 59. With regard to claims 53-55, see the discussion of claim 59-61 which discussion also applies here to similar language in these claims. With regard to claims 56-58, see the discussion of claims 52 and 54-55 *supra* which discussion also applies here to similar language in these claims. The lack of support is exacerbated by the lack of clarity discussed *supra*, e.g. see the preceding paragraph. If Applicant maintains the claim language the portion of the originally filed specification which provides support for the combination of each claim in a single embodiment should be set forth.

Claim Language Interpretation

11. None of the claim terminology has been specifically defined in the specification. Therefore, such terminology is given its common meaning, i.e. dictionary definition. With regard to the claims, see MPEP 2163.06, I. and discussion in paragraphs 9-10 *supra*.

Allowable Subject Matter

12. See discussion in paragraphs 9-11, i.e. each independent claim now requires not only opposite cuffs located longitudinally at opposite lateral sides of the absorbent structure so as to

be provided separately from the structure and side flap but each of the standing *cuffs* *having a free portion* adapted to contact a wearer's leg, i.e. "free" and "provided separately", the free portion comprising a base portion attached to the side flap, i.e. yet not "free" and not "provided separately", a folding portion located at a longitudinal centerline-side with respect to the base portion, a standing portion located between the base portion and the folding portion, and a contacting portion folded back at the folding portion so as to extend laterally outward away from a longitudinal centerline and adapted to contact the wearer's leg, the free portion provided with stretching members for applying stretching force to the free portion so that the free portion extends in a direction toward the wearer's leg when the wearer wears the article, two or more stretching members arranged in the vicinity of a distal end of the contacting portion so as to be spaced from each other, at least one stretching member arranged in the vicinity of a proximal end of the base portion, and at least one the stretching member arranged in the vicinity of said folding portion in combination with the other features of such respective independent claim.

Response to Arguments

13. Applicant's remarks of 5-09 have been considered but are either deemed moot in that such matter has not been repeated or is deemed not persuasive for the reasons set forth supra.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the pending claims, the cancellation of claims and the addition of new claims.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

July 9, 2009